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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,072	02/20/2004	Markus T. Metzger	INT.P011	7014
45512	7590	10/18/2007		
LAWRENCE CHO C/O PORTFOLIOIP P. O. BOX 52050 MINNEAPOLIS, MN 55402			EXAMINER CHAVIS, JOHN Q	
			ART UNIT 2193	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/784,072

Applicant(s)

METZGER ET AL.

Examiner

John Chavis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/5/06
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. The claimed invention is directed to non-statutory subject matter. Claims 1 - 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result. No physical transformation is recited and additionally, the final result of the claim is executable code (software) comprising descriptive material (wherein...) or a compiler (software), capable of providing various functions which is not a tangible result because the claimed software is not directed toward a process (method), a machine (an apparatus or system with specific **hardware** components specified), a manufacture (for example, a computer storage medium comprising various interacting functions) or a composition of matter. Claim 1 claims a system; however, nothing in the claim recite a hardware components, which are expected to represent a system. Claim 7 claims a compilation environment, which is not considered a method, manufacture or a composition of matter. The claim appears to be an attempt to claim a machine; however, nothing in the claim appears to refer to hardware components, which are expected to represent a machine. The dependent claims do not overcome the deficiencies associated with their respective parent claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Henry (7,000,227).

What is claimed is:

Henry

1. A system for performing code optimization, comprising: an optimizing analyzer within a compiler to generate a first optimizing transformation and a second optimizing transformation and their satisfying conditions for a compiled code; and

an optimization transformation module within a linker to determine which of the first and second optimizing transformations

See the title and the abstract. The abstract specifically indicates that multiple (1<sup>st</sup> & 2<sup>nd</sup>) optimizations occur and the most optimized code is selected. The analyzer is considered taught via the function that determines which code to select.

See col. 7 lines 4-33.

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should be selected when the compiled code is linked with other compiled codes, and

to execute the selected one of the first and second optimizing transformations at link-time.

2. The system of claim 1, wherein the optimization transformation module determines which of the first and second optimizing transformations should be selected by checking the satisfying conditions with information only available at link-time.

3. The system of claim 1, wherein the first and second optimizing transformations and their satisfying conditions are in the form of conditional relocation operations.

4. The system of claim 1, wherein the first and second optimizing transformations are address base binding optimizing transformations.

5. The system of claim 1, wherein the first and second optimizing transformations are function cloning optimizing transformations.

6. The system of claim 1, wherein the first and second optimizing transformations are data allocation optimizing transformations.

See col. 5 lines 43-59. Also see col. 7 lines 4-15, which indicates that code is executed in real time

“ “ “ “

The selections are considered to enable the conditional features, see claim 1.

See fig. 6 and col. 5 lines 3-11.

See col. 1 lines 47-52 and lines 61-64.

See fig. 5, item 530 and col. 6 lines 38-39.

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In reference to claims 7-9, see the rejection of claims 1-3

Claim 10 is rejected in view of claims 4-6 above.

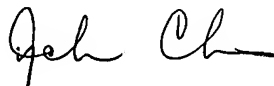
The features of claims 11, 13, 12, 14, 16, 15 and 17, 19, 18, 20, 22, 21 are rejected as claims 1-6 above, respectfully.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-F, 9:00am-5:30pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jc



John Chavis  
Primary Examiner AU-2193